

BEFORE
THE OHIO POWER SITING BOARD

In the Matter of the Application of Republic)
Wind, LLC, for a Certificate to Site Wind) Case No. 17-2295-EL-BGN
Powered Electric Generating Facilities in)
Seneca and Sandusky Counties, Ohio)

**MOTION OF THE LOCAL RESIDENT INTERVENORS TO REOPEN
PROCEEDINGS FOR ADMISSION OF NEWLY-DISCOVERED EVIDENCE**

Pursuant to Ohio Admin. Code (OAC) 4906-2-31(B), the Local Resident Intervenor move that the Ohio Power Siting Board (“OPSB” or “Board”) reopen the hearing record to admit evidence about two new Bald Eagle nests that have been built in or near the Republic Wind Project Area and the death of a Bald Eagle struck by a wind turbine blade near Bowling Green, Ohio.¹

MEMORANDUM IN SUPPORT

OAC 4906-2-31(B) describes the circumstances in which the Board may reopen a proceeding to admit new evidence:

- (A) The board or the administrative law judge may, upon their own motion or upon motion of any person for good cause shown, reopen a proceeding at any time prior to the issuance of a final order.
- (B) A motion to reopen a proceeding shall specifically set forth the nature and purpose. If the purpose is to permit the presentation of additional evidence, the motion shall specifically describe the nature and purpose of the requested reopening of such evidence and shall set forth facts showing why such evidence

¹ This motion is filed on behalf of Local Resident Intervenor Joseph and Diane Anderson, Denise Bell, Aaron and Carrie Boes, Richard and Linda Bollenbacher, Rob and Mary Chappell, Thomas and Kathleen Fries, Leslie Hackenburg, Jeffrey and DeeAnne Hamilton, Mary and Allen Hassellbach, Duane and Deb Hay, Ethan and Crystal Hoepf, Gary and Dawn Hoepf, Jason and Michelle Hoepf, Taylor Hoepf, David P. Hoover, Jeffrey A. Hoover, Kenneth and Debra Hossler, Greg and Laura Jess, Leonard and Beverly Kubitz, Gary and Michelle Miller, Steven and Kelley Miller, Kim Mitchell, Charles and Linda Morsher, Patricia Motry, Steven and Linda Mulligan, Doug and Jennifer Myers, Linda Niederkohr, Kevin and Jennifer Oney, Nicholas and Michelle Reiter, Tom and Lori Scheele, Elaine Schultz, James and Victoria Seliga, Eugene & JoAnn Smith, James and Elaine Steinmetz, Herman and Patricia Studer, Christine Vogt, Mark Weber and Cindra Riley, Charles and Rhonda Weyer, Ann Wright, and Chris and Danielle Zeman.

could not with reasonable diligence have been presented earlier in the proceeding.

Subsequent to the conclusion of the adjudicatory hearing in this case on November 2, 2019, two pairs of Bald Eagles built new nests in the vicinity of the Project Area known as the Robinson Nest and the N & F Wildlife Nest. See nest sites # 13 and # 11, respectively, on Exhibit A hereto (the Weller Nest, which was the subject of testimony in the hearing, is at nest site # 10). The Robinson Nest is located just outside of the Project Area, and five turbine sites are within 2.5 miles of the nest. Exhibit B. The N & F Wildlife Nest is located inside of the Project Area, less than 2.5 miles from 15 turbine sites. Exhibit C. Six of these turbines sites are less than a mile away from the new nest, with the closest one being only a half mile away. *Id.* Both nests are in active use.

On May 1, 2020, the Toledo *Blade* published a news story about a Bald Eagle that was struck and killed by a rotating wind turbine blade near Bowling Green, Ohio in January 2020. Exhibit D.

The Local Residents seek to introduce evidence about the two new nests and the eagle's death. This evidence is pertinent to the Republic Wind Project's threats to Bald Eagles, which is a central issue in the case. Since the eagle's death and the construction of the two new nests occurred after the hearing, this evidence could not have been presented during in the proceeding.

Respectfully submitted,

/s/ Jack A. Van Kley
Jack A. Van Kley (0016961)
Van Kley & Walker, LLC
132 Northwoods Blvd., Suite C-1
Columbus, Ohio 43235
(614) 431-8900 (telephone)
(614) 431-8905 (facsimile)
Email: jvankley@vankleywalker.com

CERTIFICATE OF SERVICE

On June 8, 2020, the docketing division's e-filing system will electronically serve notice of the filing of this document on the following counsel for the parties: Sally W. Bloomfield (sbloomfield@bricker.com), Dylan Borchers (dborchers@bricker.com), Joshua D. Clark (jclark@senecapros.org), Leah F. Curtis (lcurtis@ofbf.org), Chad A. Endsley (cendsley@ofbf.org), Miranda Leppla (mleppla@theoec.org), Amy M. Milam (amilam@ofbf.org), Mark Mulligan (mulligan_mark@co.sandusky.oh.us), Devin D. Parram (dparram@bricker.com), Chris Tavenor (ctavenor@theoec.org), Trent Dougherty (theoec.org), Dane Stinson (dstinson@bricker.com), Derek Devine (dwd@senecapros.org), Jodi Bair (jodi.bair@ohioattorneygeneral.gov), and William Cody. On the same date, I served a copy of this filing by electronic mail on the above-listed counsel, Dennis Hackenburg at Dennyh7@frontier.com, and Mike and Tiffany Kessler at mkessler7@gmail.com.

/s/ Jack A. Van Kley
Jack A. Van Kley

EXHIBIT A

Active Eagle's Nests

Republic Wind Footprint

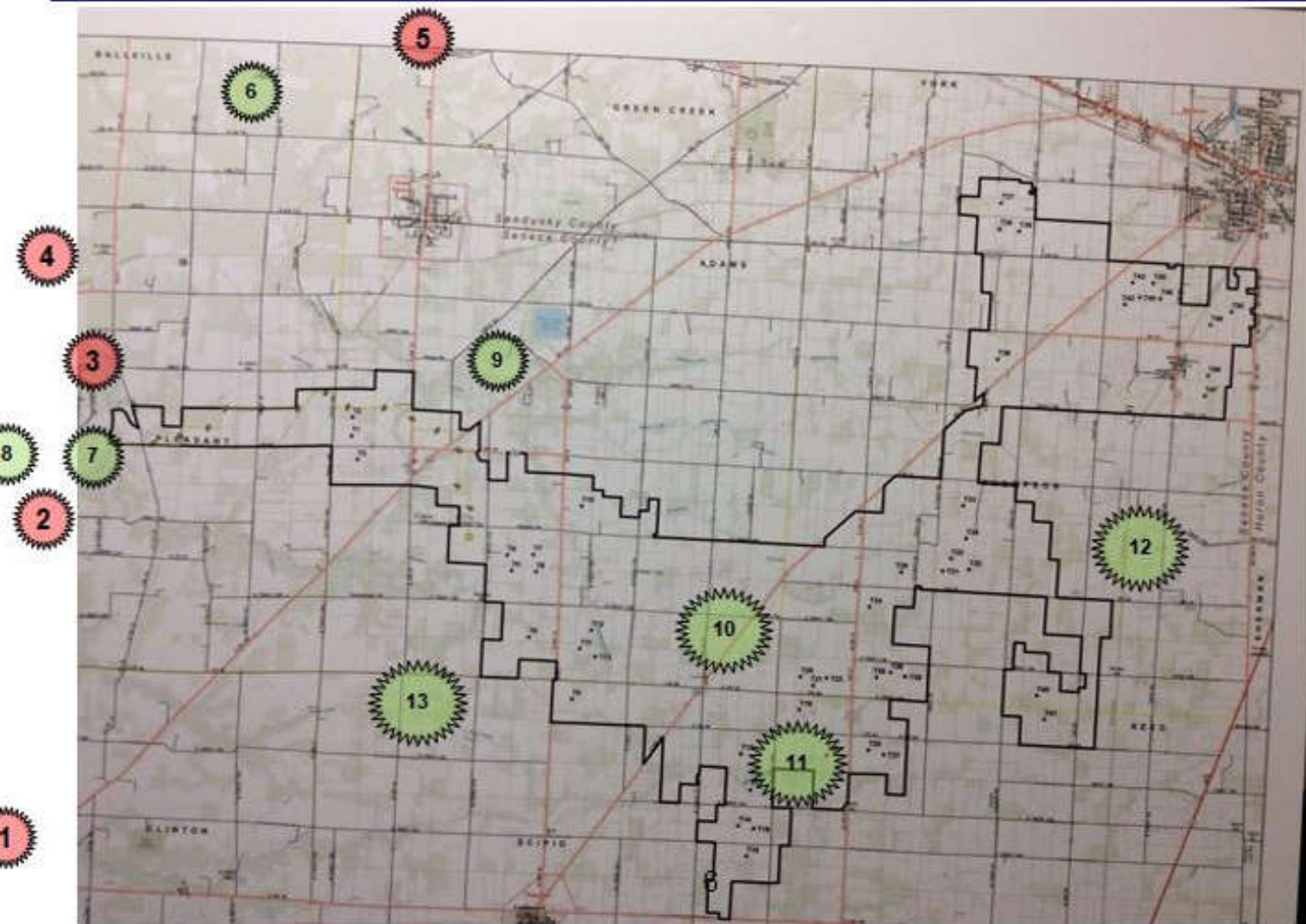



EXHIBIT B

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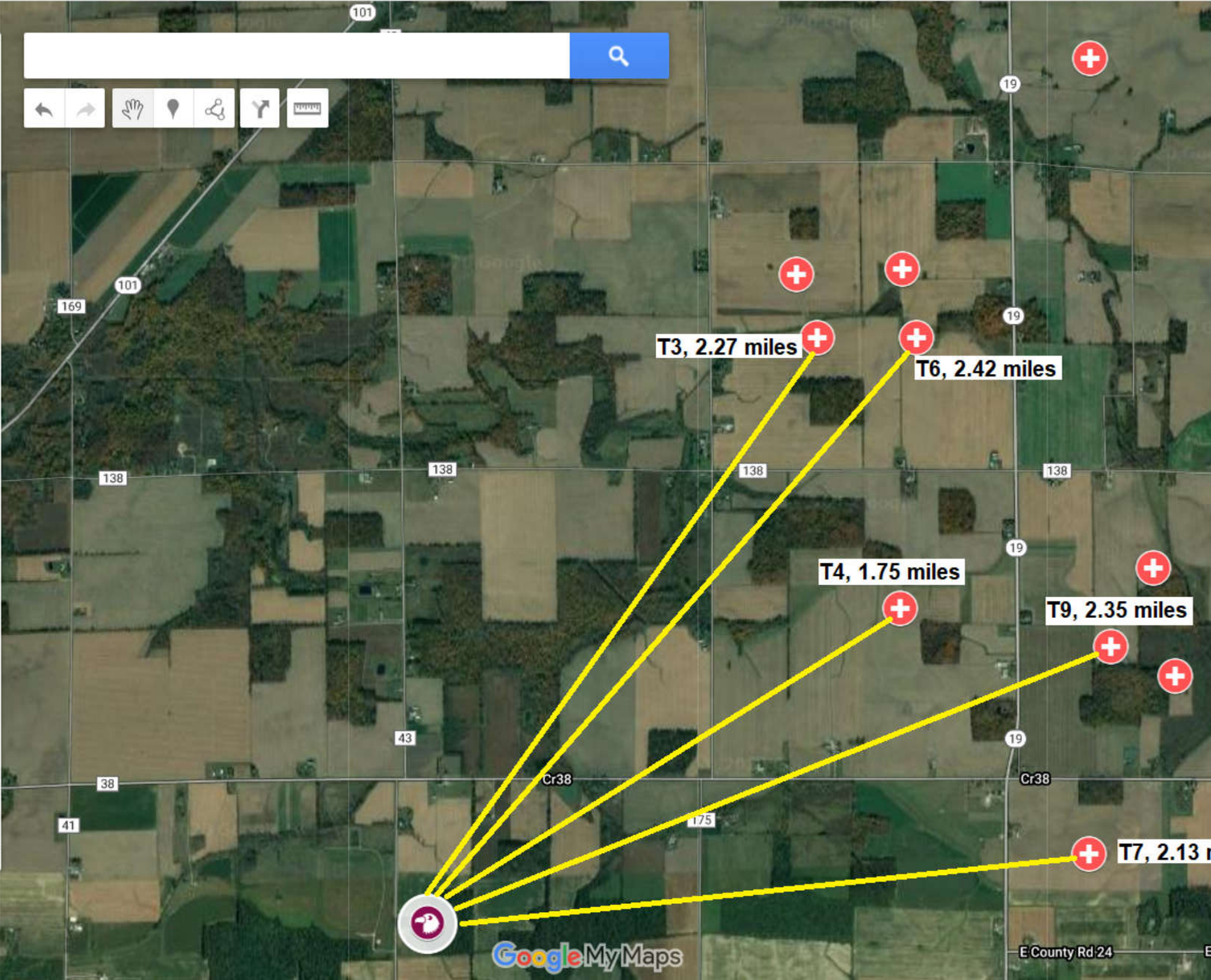

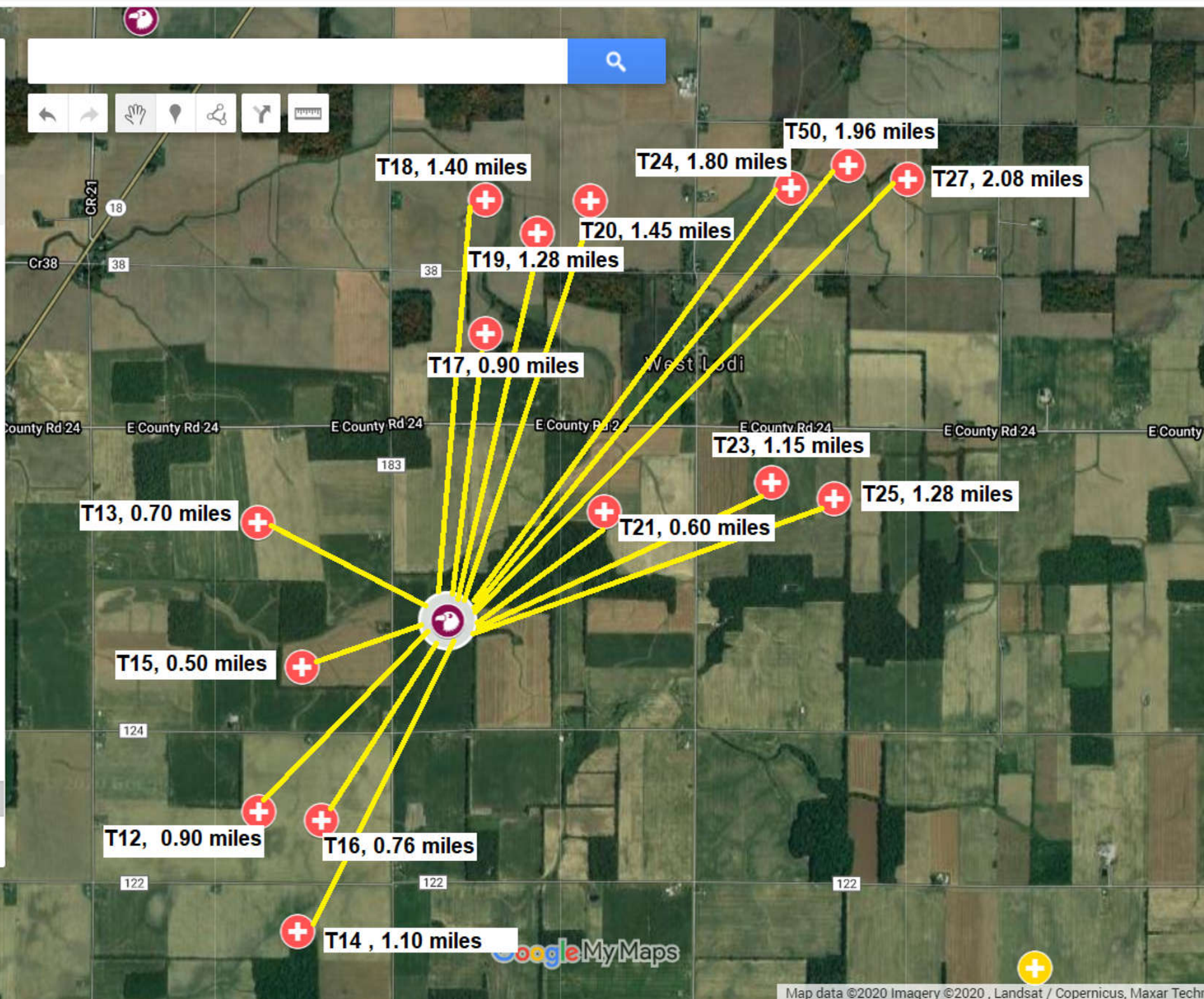
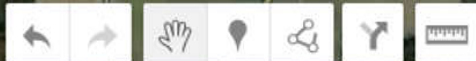


EXHIBIT C

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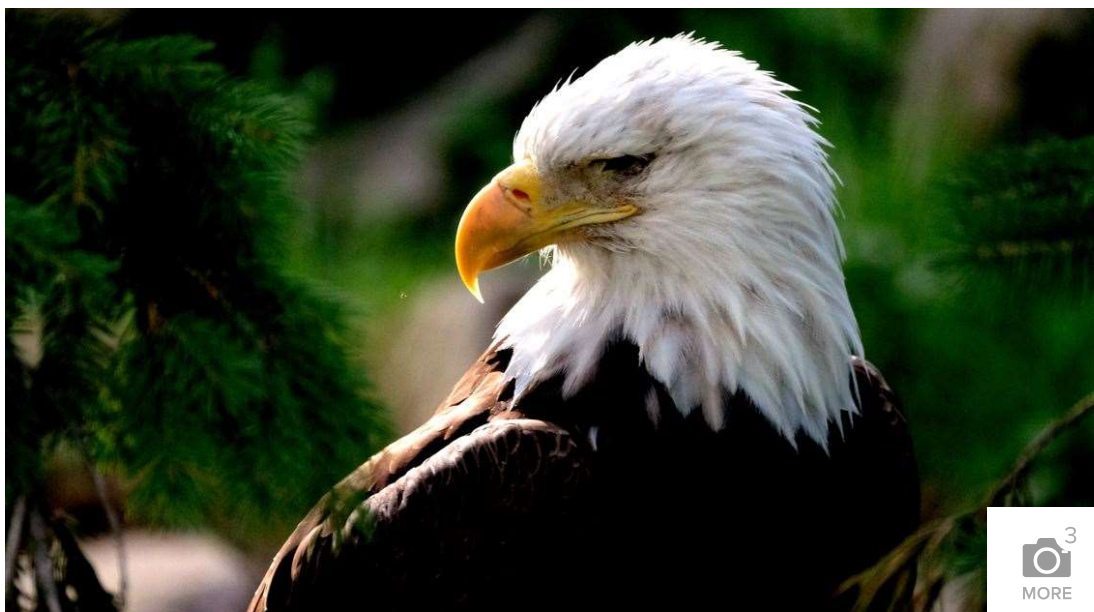
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Google My Maps

EXHIBIT D

Coronavirus: Click to view our coverage, updates on the pandemic



MORE

Bald eagle killed by wind turbine at Wood County site

**MATT MARKEY** ✓

The Blade

mmarkey@theblade.com

MAY 1, 2020

1:15 PM

BOWLING GREEN — As they labored trying to start a broken down truck near the north end of the Wood County Landfill, Ken Vollmar, superintendent of the facility, and one of his employees felt the bite of the winter chill. Their cold hands had their attention as one of the four wind turbines located at the site spun nearby.

But then they heard a loud thump and turned to witness a large bird tumbling to the frozen ground. What they soon learned was the severed wing of the bird floated in its slower descent and landed about 50 feet away.

He immediately called his superiors downtown and then reported the incident to the Ohio Department of Natural Resources.

ADVERTISEMENT

Reid Van Cleve, a veteran officer with the Division of Wildlife assigned to Ottawa County, who was also covering Wood County that January day, responded to the site in about an hour. The report he filed on the kill indicated the dead bird was an adult bald eagle, a species safeguarded under the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act.

“The wing was ripped off,” Officer Van Cleve said last week. “It was definitely a turbine strike.”

Following protocol with incidents involving federally protected species, he took the dead eagle to an evidence storage facility and contacted the U.S. Fish and Wildlife Service, and one of their investigators picked up the carcass.

Amy Weller, who lives near the Bowling Green wind farm, said she had been concerned since the first two turbines went up in 2003 that their large blades would claim many birds, bats, hawks, or even bald eagles. Two more of the 1.8-megawatt turbines were added the following year. Bowling Green owns about a 50-percent share in the facility and the wind farm provides just 1.5 percent of the electrical needs for the city, according to Daryl Stockburger with the Bowling Green Utilities Department.

“I was opposed to those windmills from the start because of the impact they could have on wildlife,” Ms. Weller said. “I had been out to California about 20 years ago and saw the carcasses on the ground under the wind turbines. From an environmental standpoint, I can’t believe they would want to do that here, with all of the migration we have in this area and the bald eagles.”



The carcass of an adult bald eagle killed when it was struck by one of the wind turbines located at the Wood County Landfill lies on the ground near the base of the turbine.

ODNR

The situation at the landfill became more critical when a pair of adult bald eagles built a large nest in one of the tall trees just east of the site. John Hageman, a retired biologist who lives a few miles from the site and travels past the landfill area often, was likely the first to report that active bald eagle nest earlier this spring when he photographed two mature bald eagles on the rim of the nest. Out of concern over the safety of the eagles nesting so close to the turbines, Mr. Hageman called USFWS and ODNR and learned an eagle had been killed at the site back in January.

probably could operate [the turbines] as they pleased,” Mr. Hageman said.

Mr. Vollmar said he is not sure how long the nest has been there and that it “seemed to come out of nowhere.”

“We’ve been seeing bald eagles here and there for years, but that nest is huge, and they seemed to have built it pretty quickly,” he said. “The ODNR told us not to be driving close to it while they’re nesting, so we’ve stayed away.”

Elizabeth Wick lives on Green Road where her family’s property butts up against the landfill, and she recalled seeing a group of bald eagles — two adults and two eaglets — in a nearby field a couple of years ago, and she assumed at the time the birds were just passing through the area.

“I was really excited to hear that they were nesting here at the landfill. I just love seeing them,” she said. “I still whip out my cellphone every time and try to get a picture. It is just really cool to have them around.”



The wing of an adult bald eagle was severed when the bird was struck and killed by one of the wind turbines located at the Wood County Landfill.

ODNR

Besides their striking appearance — a deep, dark brown body that appears almost black, with a bright white head and tail — bald eagles also stand out for their size. Adults have a wingspan of about 6 1/2 feet, making them one of the largest raptors in North America.

More than three months after the bald eagle was killed at the landfill, the USFWS has released no pictures or written reports on the incident, and has given out very little basic information.

where the case is being handled.

This past week, Holly Karg, the director of media relations and communications with American Municipal Power, Inc., which operates the wind turbines at the Bowling Green site, said AMP had not received a report of the eagle being killed by the turbine, so an investigation was started in response to The Blade's inquiry.

"The investigation provided no evidence of the claim," Ms. Karg later stated in a Thursday afternoon email.

The lack of information being disseminated about the incident does not surprise Mr. Hageman, who serves on the conservation committee for the Black Swamp Bird Observatory. What makes this incident so significant is it has provided a habeas corpus moment.

"We have these discussions all of the time about how the turbine operators are being so secretive about the number of bird and bat kills that take place at these sites. They are absolutely petrified about the general public knowing how many eagles and bats are killed by wind turbines," he said.

A recent report by Audubon indicated wind turbines in North America kill up to 328,000 birds each year, "making it the most threatening form of green energy," Audubon said. Many experts believe the actual death toll from wind turbines is much higher due to random sampling protocols and the proliferation of turbines across the landscape. The Audubon report also cited the rapid expansion of wind energy in the United States and added "the wind industry has the incentive to stop the slaughter" by giving serious consideration to the potential impact on birds and wildlife when determining where wind farms are developed.

"Especially with bald eagles, are we going to fight so hard to save something that was almost extinct, and then say it's OK to kill them?" Mr. Hageman said, referencing the fact bald eagles, revered since they were designated as the national symbol of the

Bald eagle numbers were decimated during the middle of the 20th century by the loss of habitat, the use of pesticides that ruined the shells of their eggs, and illegal hunting.

By 1979, there were only four nesting pairs left in Ohio, and none of those nests were producing any young.

A ban on the use of DDT and better protection of the eagles and their habitat with the Endangered Species Act allowed the bald eagle to start a steady recovery. By 2007, bald eagle numbers had recovered to the point that the USFWS removed them from the endangered species list. A recent survey by the ODNR indicated there are 707 bald eagle nests in the state and bald eagles are nesting in 85 of Ohio's 88 counties.

Bald eagles have been a dominant factor in the debate over a half dozen proposed massive wind farms in Seneca, Huron, Erie, Sandusky, and Crawford counties. The Republic Wind, Seneca Wind, Emerson Creek Wind, Honey Creek Wind, Buck Springs Wind, and Emerson West Wind projects could add hundreds of wind turbines to a part of Ohio that is used by many migratory birds, and is now home to many bald eagle nests.

Chris Aichholz is an activist with Seneca Anti-Wind Union, a grassroots group that has been battling with the large power brokers seeking to add these new wind farms across northwest Ohio's agricultural midsection, and in the middle of what has become very active bald eagle nesting grounds. An ODNR study earlier this spring revealed Seneca County ranks fifth in Ohio with at least 24 active bald eagle nests.

Mr. Aichholz, who lives in rural Seneca County, said he now regularly sees adult bald eagles soaring and hunting across the farm fields and woodlots near his home. His concern for the fate of the bald eagles spiked when he learned that the Seneca Wind project, now in a state of limbo, would have included 27 wind turbines twice the height of those at the Bowling Green wind farm within two miles of his home.

“That dead eagle is the reality of this issue, and it shows that this can happen right here in our backyard. It is awful, and you just hope you can find someone who is interested on the federal level and get them to take some kind of action.”

Mark Shieldcastle, a retired avian biologist from the ODNR who is widely recognized as the region’s preeminent expert on birds and bald eagles, said the flying and hunting patterns of bald eagles put them in a very precarious position when wind turbines sprout in their habitat.

“They do a lot of crepuscular movement, before dawn and after dark, and that would make it very difficult for them to see things such as the moving blades of a wind turbine,” he said. “I’m sure these wind companies don’t want to get the word out that a turbine killed an eagle, but these turbines might be directly between their feeding area and the nest, so I could see their style of flight being very problematic.”

Mr. Hageman, who retired in 2011 after a quarter of a century working for Ohio Sea Grant and Ohio State University’s Stone Laboratory, said any new wind projects should be heavily scrutinized for their potentially devastating impact on birds, bats, bald eagles, and hawks, while existing facilities such as the Bowling Green wind complex should modify the use of the turbines to give the resident bald eagles a chance to survive.

“I would like to see them turn the darned things off at least through the early part of the year when they are raising young and teaching them to fly,” he said. “That seems like a small sacrifice to keep these birds alive. Bald eagles are the most valuable player in the bird world, but I get the impression that some people look at them as expendable these days, since we have more around.”

SHOW COMMENTS 

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Case No(s). 17-2295-EL-BGN

Summary: Motion to Reopen Hearing Record for Newly Discovered Evidence electronically filed by Mr. Jack A Van Kley on behalf of Local Resident Intervenors